

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:22-cv-22171-JEM

MICHAEL J. FITZGERALD,
individually, and YALENY DE
VARONA, individually,

PLAINTIFFS,

VS.

RONDA MCNAE, individually,
and WILLIAM MCNAE, individually,

DEFENDANTS.

_____/

VIDEO DEPOSITION OF: MICHAEL J. FITZGERALD

DATE: MARCH 3, 2023

TIME: 9:08 A.M. - 6:43 P.M.

PLACE: 200 SE 1ST STREET
4TH FLOOR
MIAMI, FLORIDA

REPORTED BY: TAMARA MASCI TANNEN, RPR, FPR-C
STENOGRAPHIC COURT REPORTER
NOTARY PUBLIC, STATE OF FLORIDA

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1 had the capability to talk to customers about technology.

2 And then shortly after that, it was to own the
3 technology strategy for SoftwareONE, which is when they
4 changed my title. It officially was Chief Innovation
5 Officer, but later changed to Chief Technology Officer, to
6 be clear. And both fundamentally were the same role, but
7 they had a title change due to -- I think they wanted to rec
8 -- some more recognition in the public market.

9 And once I'm the Chief Technology Officer, I then
10 had responsibility for technology strategy and to a degree
11 customer strategy, what would we offer our customers.

12 And then a short period after that, I owned the
13 software engineering division which builds the platform
14 formerly known as Pyracloud or Piracloud, as you may see it
15 spelled. And then we rebuilt and refounded that division
16 into Goatpath, and just earlier than the date that's
17 announced here, but as a public company you can only
18 announce things publicly when they're ready, so obviously,
19 we were working on that for a period of time, possibly up to
20 12 months, I would say.

21 Q. Who did you report to during your time at
22 SoftwareONE?

23 A. The CEO for the whole time. The two different
24 CEOs.

25 Q. And who were the two CEOs?

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1 go throw myself off a bridge. So I like to forget that I've
2 seen these things, but I will presume it's okay to say that
3 I have seen it before.

4 Q. Are you aware that on or about December 30th of
5 last year, your attorney filed this document on your behalf
6 seeking damages for breach of contract and for libel?

7 A. I'm aware that we sought damages for breach of
8 contract, yes. Now you've connected the dots that this was
9 the document that he filed -- or they filed.

10 Q. Okay. What were your job responsibilities at
11 SoftwareONE as they relate to SoftwareONE's role as a
12 business partner with Microsoft Corporation?

13 A. It's -- it's difficult to explain, but I suppose
14 the way I would summarize it very clearly is my
15 responsibility was to create solutions for customers. So
16 all the team of people that I was responsible for would
17 create solutions for customers.

18 Microsoft was a large partner and is a large
19 partner, I still believe, of SoftwareONE. And I would
20 review whether Microsoft Solutions would be part of our
21 portfolio and which Microsoft Solutions would be part of our
22 portfolio.

23 But to be quite clear, Microsoft Solutions are
24 always part of SoftwareONE's portfolio. Because this is
25 public information, I have to state, so -- but Microsoft

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1 did you work directly with at Microsoft?

2 A. Probably in excess of 200 people. We had an
3 account manager in every country that SoftwareONE operates.
4 So 92 countries, and usually, a technical services contact
5 similar. And then, Wismar. Plus, there's another technical
6 services contact. Maybe 30 to 35 executives off the top of
7 my head, support people, product management, marketing,
8 multiple people.

9 Q. How would you describe your working relationship
10 with Will McNae in 2018?

11 A. Good.

12 Q. And in your role as a business partner acting on
13 behalf of SoftwareONE, did you provide feedback to Microsoft
14 on Will McNae's job performance?

15 A. Always, yeah.

16 Q. In 2018, did you socialize with Will McNae outside
17 of work?

18 A. I guess it was 2018 then, so I would say yes. But
19 I'm unsure of the timeframe. But I definitely socialized
20 with Will outside of work in the time that we worked
21 together, yes.

22 Q. Did you socialize with Will McNae outside of work
23 prior to meeting his wife?

24 A. Yes, I think so, yes. Actually, let me define
25 "out of work" because there is no out of work for me.

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1 misunderstand my last answer, I said I wouldn't be surprised
2 if I invited them many times to Miami. But I didn't clarify
3 that I did.

4 And on the second point, I invited them to Miami
5 because SoftwareONE was IPO'ing. And that was a celebration
6 for me. It wasn't a SoftwareONE IPO celebration. It was a
7 "Mike is happy SoftwareONE is IPO'ing" celebration.

8 Q. Okay. But you didn't actually answer the
9 question. Did you invite them?

10 A. Oh, sorry. I -- I'm sure I did invite them, yes,
11 I think I did.

12 Q. And did you offer to pay for the trip?

13 A. Yes.

14 Q. Why did you offer to pay for the trip?

15 A. I do this with many of my friends that -- where I
16 think they may not be able to come if I couldn't help. I
17 would always try and share. I've done this throughout my
18 life and I still do it today.

19 Q. Who else did you invite to the "Mike is happy
20 celebratory weekend" in Miami?

21 A. I like the name.

22 I invited my friend Gil Mattos, but he was out of
23 town. I invited Patrice, which I think you're aware of. I
24 invited -- I was working at the time during the week with a
25 friend from SoftwareONE, Tim. I invited Tim Naeylan, also

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1 of the sunlounger kissing with Ronda?

2 A. Ronda put her -- my penis in her mouth. And I
3 remember it specifically because it was extremely
4 aggressive.

5 Q. How did you come to not be wearing your swim
6 trunks?

7 A. She pulled them down.

8 Q. Did you stand up?

9 A. Yes, we were both standing up for a little while
10 kissing.

11 Q. Okay. So after you were sitting on the lounge
12 chair kissing, you stood up --

13 A. Yes.

14 Q. -- and were kissing?

15 A. Yes, correct.

16 Q. Okay. And after you stood up and were kissing,
17 Ronda pulled off your swim trunks?

18 A. She sat down and pulled down my swim trunks.

19 Q. Okay. And after that, she put your penis in her
20 mouth?

21 A. Yes.

22 Q. Where was she and where were you?

23 A. She sat on the sunlounger in front of me facing me
24 and I stood up with my back facing half towards the pool and
25 half towards the door.

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1 Q. Okay. What happened next?

2 A. I'm -- I laid on the sunlounger. And Ronda
3 climbed on top of me.

4 Q. Was Ronda wearing a swimsuit?

5 A. I remember at some point, no. But I don't
6 remember when she took it off.

7 Q. Ronda undressed herself?

8 A. I didn't -- I didn't say that. I said I don't
9 remember when she took it off. I just know I didn't take it
10 off.

11 Q. Isn't that you saying Ronda undressed herself?
12 Who else would have taken it off?

13 A. I guess it is, if that's -- but I'm saying I don't
14 remember how her swimsuit came off. I don't think I took it
15 off is maybe to clarify your point.

16 Q. Okay. At this point, you're both naked on the
17 sunlounger?

18 A. I was laying with my back on the sunlounger.

19 Q. How did you get to be laying on the sunlounger
20 where Ronda climbed on top of you?

21 A. I sat down and laid down on the sunlounger.

22 Q. Okay. What happened after Ronda climbed on top of
23 you after you laid down on the sunlounger?

24 A. We had sex. Ronda sat on top of me first and then
25 we turned over so she was underneath me next. And then I

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1 gave her oral sex at that point. And then she sat back on
2 top of me and we were having an open conversation about
3 well, Will is going to be here soon and we need to be
4 careful when he comes back. And I kept asking her to check
5 her phone because I didn't know where he was. And first of
6 all, we knew he landed, and then we knew he was on his way
7 to the hotel, and then we knew he was almost here and I was
8 panicking. Ronda didn't seem to be panicking. And at that
9 point, I remember we quickly got our stuff and went
10 downstairs for Will arriving.

11 Q. How did you learn that Will had landed and was
12 about to be arriving?

13 A. Ronda told me.

14 Q. How did Ronda find out?

15 A. I think she was texting him. Kept looking at our
16 phones.

17 Q. What time was all this?

18 A. I don't recall exact time. I think we got back to
19 the hotel around 4 A.M. and -- but I have no idea. I think
20 Will landed sometime between 6:00 and later. So I guess it
21 was sometime between 4 A.M. and when -- up until Will
22 landed. But again, I stress that those things are
23 estimates.

24 Q. Okay. How long did your sexual encounter with
25 Ronda last?

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1 A. I'm not dismissing it because people are making
2 heinous and hideous accusations against me that are not true
3 that is destroying my life and my personal health.

4 Q. Okay. But --

5 A. So I can stop it if people are prepared to stop
6 telling lies and destroying my health, so then I'd be
7 prepared to stop, yes.

8 Q. Do you need a minute?

9 A. Let's take a minute, please.

10 THE VIDEOGRAPHER: Going off the video record at
11 11:05 A.M.

12 (Recess was taken.)

13 THE VIDEOGRAPHER: And we're back on the video
14 record at 11:28 A.M.

15 BY MS. FOTIU-WOJTOWICZ:

16 Q. So the -- after the celebratory dinner --

17 A. Mm-hmm.

18 Q. -- did you ever ask Ronda whether she wanted to
19 have sex with you?

20 A. I don't think so.

21 Q. Did you --

22 A. I can't be clear for sure whether I asked the
23 question because I wouldn't remember. I don't think I did.

24 Q. And did you ever -- do you recall getting any type
25 of verbal consent from her?

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1 A. I'm -- I'm not so sure whether I got verbal
2 consent. But she put my penis in her mouth and I think the
3 demonstrated action is probably consent. And then she sat
4 on my penis without me instigating it. And I think that's
5 also consent.

6 Q. At any point, did you ask her to stop?

7 A. Yes. When I felt Will was coming, I said we need
8 to stop. And she tried to grab ahold of my penis in the
9 shower, and I said stop. And she continued to do it.

10 Q. Prior to getting nervous that Will was coming, did
11 you ask her to stop?

12 A. Not that I recall.

13 Q. How big is Ronda McNae? How tall is she?

14 A. I don't know. I don't know how tall she is.

15 Q. Is she short? Medium? Tall?

16 A. Medium, I think.

17 Q. Ronda McNae's medium height?

18 A. Compared to my wife, she's definitely medium
19 height, yes.

20 Q. How much would you say she weighs?

21 A. I have no idea. But I generally couldn't tell
22 you. Eight stones, nine stones.

23 THE REPORTER: Eight what?

24 THE WITNESS: Sorry, I'm being British. We
25 don't -- we don't do pounds. Nine stones is how --

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1 on SoftwareONE's email, so I may have not have access to
2 them. But I will -- I'm prepared to look in my personal
3 email if there's a request to look.

4 Q. When did you start -- when did you renew your
5 relationship with Ms. de Varona?

6 A. Sometime in November, I think.

7 Q. Did you ever break up again after that?

8 A. Yes.

9 Q. When?

10 A. When Ronda and Will reached out to Yelany.

11 Q. Okay. How did you come to -- well, strike that.

12 Did you see Ronda McNae physically anytime between
13 Miami and November 2nd in San Francisco?

14 A. No, I don't think so, other than Facetime, so not
15 physically.

16 Q. How did you come to see Ronda McNae in San
17 Francisco?

18 A. We talked about getting together to work out if we
19 were going to have a relationship or not. We also talked
20 about what a potential relationship would look like. I was
21 in the Far East, and I had an original flight plan to come
22 into the U.S. I think it probably genuinely was originally
23 to see Patrice, so it would have been in a different
24 location. And I changed that flight because Ronda told me
25 she was visiting, I think her niece. And in the San

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1 Francisco -- I think it was Sacramento. And I said I could
2 change my flight to be in that location. And we agreed to
3 meet that weekend to sit down to talk about having a serious
4 relationship.

5 Q. When did you break up with Patrice?

6 A. The weekend of Miami.

7 Q. When during the weekend?

8 A. I think Patrice actually broke up with me before
9 the dinner. And I think we probably officially broke up
10 later in the weekend after we talked about it a couple of
11 times.

12 Q. Okay. So I just want to get a timeline of the
13 weekend correct. At the start of the weekend you were in a
14 relationship with Patrice, right?

15 A. Correct.

16 Q. And then Patrice broke up with you Friday night,
17 and that continued throughout the course of the weekend?

18 A. She pretty much broke up with me before. I knew
19 if she didn't arrive in Miami, then we were not going to be
20 together again because it was starting to fizzle out as a
21 relationship. And she knew that was an important weekend to
22 me. So I'd say we broke up when she didn't turn up. But I
23 did talk to her over the weekend, for sure.

24 Q. And then after you -- or Patrice -- is it fair to
25 say she broke up with you by not showing up for this

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1 weekend, right?

2 A. I think I actually decided and spoke to Ronda
3 about it. And she -- and Ronda had actually said what
4 difference does it make at this point? Or not -- not those
5 exact words, but instigated such an outcome.

6 Q. When did Ronda tell you words to the effect of
7 "what difference does it make at this point?"

8 A. Before we arrived in San Francisco.

9 Q. Did she tell you that verbally or in writing?

10 A. Unsure.

11 Q. Okay. When did you first see Ronda in San
12 Francisco?

13 A. She picked me up from the airport.

14 Q. What did you do after that?

15 A. We drove in this nice car that she had rented.
16 She drove into town and we went to the hotel that I booked
17 for us.

18 Q. And before getting there, did you discuss whether
19 you would have a single room or separate rooms?

20 A. Yes, we discussed. And we agreed that it wasn't a
21 problem for us to have one room together.

22 Q. Okay. So you discussed beforehand how you were
23 not going to have sex and also discussed how it would be
24 fine to both stay in the same room?

25 A. Yes.

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1 Q. Okay. Did the room that you booked for yourself
2 and Ronda have one bed or two beds?

3 A. From my recollection, it had one bed.

4 Q. Okay. So you discussed beforehand how you didn't
5 want to have sex with Ronda, but then booked a room --
6 single room for the two of you with a single bed?

7 A. It's not a -- so a double bed or as in a large
8 bed, but one bed, yes, correct.

9 Q. Okay. What did you do after you checked into the
10 hotel?

11 A. We went on like a walking tour, I'm going to say,
12 of San Francisco together, but like a walking date day. If
13 you like, we rode on the trams going up and down into town.
14 We walked down by the waterfront. We had some lunch and a
15 beer from a little beer truck. We went to see the sea
16 lion/seals that sit down on the pier there. We stopped in a
17 few places to hang out. We had a date day. We laughed. We
18 joked. We kissed. We held hands. We talked about the
19 future. We were very comfortable with each other and very
20 much enjoying each other's company.

21 Q. How did you come to have sex in San Francisco
22 despite your agreement not to?

23 A. Ronda instigated sex. She took off the onesy
24 after we joked about it for many times. We had been
25 cuddling and kissing on the bed. And we ended up having

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1 sex. It started with she performed oral sex on me.

2 And it -- to be very clear, the reason I remember
3 this very specifically is because it was very much not as
4 aggressive as it was in Miami.

5 Q. What happened next?

6 A. We had sex on the bed. I'm aware that Ronda
7 thinks that for some reason, I tried to force anal sex.
8 That simply isn't true. My penis slipped towards her anus.
9 And she said, you need to stop. And I stopped straightaway
10 and said I didn't do that on purpose. And she joked with me
11 that I did. And I definitely didn't. It was not an
12 intentional thing to do. And then we carried on having sex.

13 Q. Isn't anal sex one of your preferred sexual
14 pleasures?

15 A. Yes. It is, yeah.

16 Q. But that attempt to have anal sex was -- was
17 accident?

18 MR. BERLOWE: Object to the form.

19 THE WITNESS: It wasn't an attempt to have anal
20 sex, so there's no accident if it wasn't an attempt.

21 BY MS. FOTIU-WOJTOWICZ:

22 Q. Did your penis penetrate her anus?

23 A. I don't think so. She said it did, but I don't
24 think so.

25 Q. Did you ask for her verbal consent --

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1 A. She --

2 Q. -- prior to having sex?

3 A. As I said, very similar in Miami, she instigated
4 it by performing oral sex on me. And I followed by
5 performing oral sex on her. So that is a form of consent by
6 instigating.

7 Q. Okay. And obviously, you didn't ask for verbal
8 consent for anal sex because you didn't attempt to have anal
9 sex?

10 A. I did not attempt to have anal sex.

11 Q. Okay.

12 A. And we clearly talked about this afterwards.

13 Q. What did you talk about after?

14 A. She said, did you sneakily try and have anal sex
15 with me? But those are not the exact words. But that's the
16 gist of the conversation. I said, no, I didn't. And she
17 laughed at me.

18 Q. Was she aware for your preference for anal sex?

19 A. Yes, because we talked very openly about sexual
20 preferences before.

21 Q. What did she tell you about her feelings with
22 regard to anal sex?

23 A. That she was okay with it, but her sister liked it
24 much more. She talked about this in Tulum. And also in
25 Tulum while we sat having dinner, there was a conversation

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1 Q. How were you aware that it happened at the time?

2 A. Because Ronda cc'd me into the email.

3 Q. And did you not have access to your SoftwareONE
4 email in March of 2022?

5 A. I did have access to my emails in March, yeah.

6 Q. Okay. Then did you receive this email at the time
7 it was sent?

8 A. I think I did, yes.

9 Q. Okay.

10 A. I'm saying I think because I can't remember
11 whether someone showed it to me or I actually received it.
12 But I'm aware of it, yeah.

13 Q. Okay. And you were aware of this communication
14 prior to filing this lawsuit?

15 A. Yes.

16 Q. What evidence do you have that Ronda McNae had
17 actual knowledge that the statements she made in this email
18 were false?

19 A. So let me -- do you mind if I read the email
20 myself?

21 Q. Take your time.

22 A. I mean, I've been very clear today that we had a
23 consensual relationship, right? Very clear about that. In
24 fact, in some cases, wasn't instigated by me. So if
25 someone's claiming sexual assault in an email, that's surely

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1 false because you asked me -- if you repeat the question,
2 what you're asking me was, how can I be sure that the
3 statements here are false? Well, I can be sure because --

4 Q. Sorry. My question's a little bit different.

5 A. Okay.

6 Q. I understand that you're claiming that the
7 statements made are false.

8 My question is: What evidence do you have that
9 Ronda knew that they were false?

10 A. What? That Ronda knew that we didn't have a
11 consensual relationship? Because Ronda knew we had a
12 consensual relationship because she instigated sexual
13 intercourse with me twice and talked about me moving to
14 Seattle to be her life partner with her children. Right?
15 So she knew if she was going to make a statement, that I
16 sexually assaulted her, that that's a false statement.

17 Q. Okay. So the evidence that you have that Ronda
18 knew it was a false statement was because she instigated the
19 two sexual encounters that you had and talked about starting
20 a life together in Seattle?

21 MR. BERLOWE: Object to the form.

22 THE WITNESS: As well as many other things. I
23 have an email from her that says that she had the
24 greatest time in her life. So I have written
25 confirmation from her about how happy she was with our

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1 relationship. And I also have -- as we've talked about
2 today, we have much evidence to suggest that there was
3 never a sexual assault.

4 BY MS. FOTIU-WOJTOWICZ:

5 Q. Anything else?

6 A. The contract, the Settlement Agreement that we had
7 with each other, which states that we shouldn't reach out to
8 anyone.

9 Q. We're talking about the evidence that you have
10 that she knows that the statements made were false. We're
11 going to talk about all the things, but I want to know right
12 now what evidence, other than what you've just told me, you
13 have that Ronda McNae knew at the time she made the
14 statement that the statement was false?

15 MR. BERLOWE: Object to the form.

16 THE WITNESS: I -- the evidence that I have is the
17 conversations, text messages, emails that we provided
18 and have been provided between me and Ronda and between
19 me and Will and between Ronda and others and between
20 Ronda and my best friend.

21 BY MS. FOTIU-WOJTOWICZ:

22 Q. Okay. Anything else?

23 A. I don't know off the top of my head, but I would
24 suggest that if we walked through all the communications, we
25 would find more.